South Carolina Law Review

Volume 11 | Issue 1 Article 19

Fall 1958

Security Transactions

E. Windell McCrackin

SECURITY TRANSACTIONS

E. WINDELL MCCRACKIN*

Bona Fide Purchase for Value

Plaintiffs brought claim and delivery proceeding in *Goodwin v. Harrison*[1] to recover an automobile. The evidence briefly was to the effect that plaintiffs had sold the automobile in question to *A*, taking a chattel mortgage for the unpaid balance. Before the mortgage was recorded in the county of the mortgagor's residence, *A* sold the automobile for value to *B* who in turn sold it to the defendant. At the trial defendant asked that an instruction be given to the jury that the equities of a bona fide purchaser for value without notice passed on to a subsequent purchaser. The court refused the instruction, but upon motion for a new trial after verdict was returned for the plaintiffs, granted the motion saying that the instruction should have been given.

Our Supreme Court, after reviewing several cases on the subject, quoted from *Corpus Juris Secundum*[2] and stated that the rule was there well stated. It is as follows:

"After property has passed into the hands of a bona fide purchaser, every subsequent purchaser stands in the shoes of such bona fide purchaser and is entitled to the same protection as the bona fide purchaser, irrespective of notice, unless such purchaser was a former purchaser, with notice, of the same property prior to its sale to the bona fide purchaser."

In addition the Court held that although this was an equitable rule, it was also applicable to cases arising under the recording statutes. Under such circumstances the issue is simply a legal one.

Setting Aside of Deed

White v. Livingston[3] was an action to set aside a deed for fraud in its execution. The case was referred to a special referee who rendered a report favorable to the defendant. Exceptions to the report were filed by the plaintiff, one being

*Member of the firm of Urner, Farlow & McCrackin, Myrtle Beach, South Carolina. A.B., 1951, Wofford College; LL.B., 1955, University of South Carolina.

1. 231 S. C. 243, 98 S. E. 2d 255 (1957).
2. 77 C. J. S., *Sales* § 296d (1952).
3. 231 S. C. 301, 98 S. E. 2d 534 (1957).

that the preponderance of the evidence shows that the deed was an equitable mortgage. However, plaintiff did not except to that portion of the report that the action was " . . . for the purpose of setting aside a deed on the grounds of fraud." The lower court approved the report of the referee, stating that under section 10-1412 of the Code (pertaining to exceptions to a referee's decision), " . . . an important limitation on the right of review requires adherence to the theory on which the case was tried below."

The Supreme Court affirmed the decision of the lower court and emphasized that pointed out just above. It also held that Section 10-1412 was applicable to equity as well as law cases.

Indemnity

An indemnity agreement was involved in *L. B. Price Mercantile Co. v. Redd.*[4] The defendant in a written instrument agreed to reimburse a bonding company ". . . for any loss up to Two Hundred ($200.00) which may occur by reason of any *dishonest act* of the said applicant and also to pay the L. B. Price Mercantile Co. any amount that *may be due and owing it* by the applicant but our aggregate liability hereunder shall be limited to $200.00." (Italics added.) A judgment was obtained against the applicant for monies had and received in the amount of $262.25. Then action was commenced against the defendant herein. The case was proved by the former judgment roll, and a directed verdict for $200.00 was obtained.

The defendant appealed alleging that the trial judge was in error in holding the former judgment conclusive of appellant's liability under the indemnity agreement. The Supreme Court pointed out the two distinct obligations under the agreement as emphasized above and affirmed the decision of the trial court. Whether the judgment was conclusive or only prima facie evidence of the liability of the defendant was of no consequence since the only ground upon which it was opposed was that the debt which it represented had not arisen from a dishonest act on the applicant's part. The agreement was not this narrow as will be seen by examining the applicable portions above.

4. 231 S. C. 446, 99 S. E. 2d 57 (1957).

Bankruptcy — Voidable Preference

Within four months of bankruptcy of the debtor, and the creditor knowing that it was insolvent, the creditor recorded several chattel mortgages which it had received previously and repossessed the chattels on which the mortgages were given. The trustee thereupon brought an action to compel the creditor to account for the value of the chattels repossessed on the ground that the repossession of the chattels — the mortgages not having been recorded prior to four months before bankruptcy — constituted a voidable preference under section 60 of the Bankruptcy Act.[5] The referee in bankruptcy so found, his report being adopted as the opinion of the district court.[6] On appeal to the Fourth Circuit Court of Appeals,[7] the lower court decision was affirmed in an opinion by Judge Haynsworth who stated:

> . . . Whatever interest in the chattels became vested in the finance company, it was referable to the chattel mortgages and was derived from the bankrupt. The transfer of that title or interest was not complete within the meaning of the Bankruptcy Act, until the mortgages were recorded. 11 U.S.C.A. Section 96, sub. a (2).
>
> . . . Under [this section] the transfers of the security can be deemed to have been not earlier than the recording dates. The transfers thus accomplished in May 1954, on the dates on which the mortgages were recorded, were made on account of antecedent debts which arose contemporaneously with the earlier execution and delivery of the mortgages . . . all of the elements of a preferential transfer are present.

Recording Act

South Carolina's recording statute[8] was again considered in *South Carolina National Bank v. Guest.*[9] Briefly the facts were that the defendant bank without notice took a chattel mortgage on an automobile after the plaintiff received a similar mortgage but before the plaintiff's mortgage was recorded. The Supreme Court upheld the decision of the trial

5. 11 U. S. C. § 96 (1952).
6. Tyson v. National Discount Corporation, 149 F. Supp. 592 (E. D. S. C. 1957).
7. National Discount Corporation v. Tyson, 257 F. 2d 18 (4th Cir. 1957).
8. CODE OF LAWS OF SOUTH CAROLINA, 1952 § 60-101.
9. 232 S. C. 367, 102 S. E. 2d 215 (1958).

court in holding that defendant bank's mortgage was a prior lien on the automobile since the recording act states that such an instrument " . . . shall be valid so as to affect the rights of subsequent creditors (whether lien creditors or simple contract creditors) or purchases for valuable consideration without notice only from the day and hour when they are recorded . . . . "

Effects of Compromise by Mortgagor with Tortfeasor After Notice by Mortgagee

In *Universal C. I. T. Credit Corp. v. Trapp*[10] an attempt was made to recover damages on a peculiar theory. It was an action by a chattel mortgagee against a defendant tortfeasor and his liability insurer for settling a tort action with the mortgagor after the mortgagee had given the parties notice. The release was for claims for personal injuries and damage to the automobile, subject of the chattel mortgage. Judgment of nonsuit was ordered by the trial court at the end of plaintiff's evidence based on three grounds, the first being that there was no legal duty resting upon the defendant insurance company to do anything concerning the alleged right of plaintiff.

The Supreme Court, speaking through Chief Justice Stukes, affirmed the trial judge stating, "Nonsuit was affirmed and the Court said, as we *conclude* here: 'The defendant was under no legal duty to protect the plaintiffs, and assumed no obligation to do so. There was no evidence of fraud or collusion. So that neither in contract nor in tort are plaintiffs entitled to maintain their action against the Casualty Company (the tortfeasor's insurer).' " (Emphasis added.)

10. 232 S. C. 297, 101 S. E. 2d 829 (1958).